

# *Omgang tussen grootouders en kleinkinderen*

EEN SOCIAALWETENSCHAPPELIJKE EN RECHTSVERGELIJKENDE STUDIE

## *Summary*

Merel Jonker

Asia Sarti

Christina Jeppesen de Boer

Katinka Lünemann

# Omgang tussen grootouders en kleinkinderen

EEN SOCIAALWETENSCHAPPELIJKE EN RECHTSVERGELIJKENDE STUDIE

Merel Jonker  
Asia Sarti  
Christina Jeppesen de Boer  
Katinka Lünemann

Met medewerking van  
Lisanne Drost  
Noël Koster

Utrecht, maart 2020

# Inhoud

<b>Samenvatting</b>	<b>4</b>		
<b>1 Inleiding</b>	<b>8</b>		
1.1 Aanleiding onderzoek	8		
1.2 Methodologische verantwoording	9		
1.2.1 Probleem- en vraagstelling	9		
1.2.2 Methode van onderzoek	10		
1.3 Theoretische achtergrond	12		
1.3.1 Internationaal juridisch kader	12		
1.3.2 Sociaalwetenschappelijk kader omtrent de rol van grootouders	15		
<b>2 Grootouders en experts aan het woord</b>	<b>20</b>		
2.1 Achtergronden grootouders en experts	20		
2.2 Oorzaken voor ontbreken contact en belang van contact	21		
2.2.1 Oorzaken van ontbreken contact tussen grootouders en kleinkinderen	21		
2.2.2 Het belang contact met grootouders en gevolgen ervan	22		
2.3 (Niet) juridische mogelijkheden tot contact en omgang	22		
2.3.1 Niet juridische mogelijkheden herstel contact of omgang	22		
2.3.2 Overwegingen om juridische stappen te nemen	23		
2.4 Aanvullingen op huidige juridische en niet-juridische instrumenten	24		
2.4.1 Wettelijke maatregelen	24		
2.4.2 Overige maatregelen	25		
<b>3 Positie grootouders in Nederland</b>	<b>27</b>		
3.1 Achtergrond huidige regeling	27		
3.2 Wettelijk kader omgangsrecht	29		
3.2.1 Wie kan een verzoek indienen?	29		
3.2.2 Ontvankelijkheidsvereiste: nauwe persoonlijke betrekking	30		
3.2.3 Inhoudelijke toetsing	33		
3.2.4 Omvang	35		
3.2.5 Niet naleving	35		
3.2.6 Wettelijke kader informatierecht	35		
3.2.7 Tussenconclusie	36		
<b>4 Positie grootouders in België, Engeland &amp; Wales en Noorwegen</b>	<b>37</b>		
4.1 België	37		
4.1.1 De rechtspositie van grootouders	37		
4.1.2 Achtergrond van de huidige regeling	37		
4.1.3 Wettelijk kader omgangsrecht	38		
4.2 Engeland & Wales	42		
4.2.1 De rechtspositie van grootouders	42		
4.2.2 Achtergrond van de huidige regeling	43		
4.2.3 Wettelijk kader omgangsrecht	44		
4.3 Noorwegen	48		
4.3.1 De rechtspositie van grootouders	48		
4.3.2 Achtergrond van de huidige regeling(en)	48		
4.3.3 Wettelijk kader omgangsrecht	50		
4.4 Rechtsvergelijking	53		
4.4.1 Achtergronden van de huidige regelingen	54		
4.4.2 De wettelijke regelingen	54		

<b>5</b>	<b>Conclusie</b>	<b>57</b>
5.1	Achtergrond positie grootouders en omgang	57
5.1.1	De oorzaken van het ontbreken van contact	57
5.1.2	Gevolgen	57
5.2	Niet-juridische mogelijkheden	58
5.3	De juridische (on)mogelijkheden	58
5.3.1	Ontvankelijkheid	59
5.3.2	Inhoudelijke toets	62
5.3.3	Aard toegewezen omgang grootouders	62
5.4	Tot slot	62
<b>6</b>	<b>Literatuur</b>	<b>64</b>
	<b>Summary</b>	<b>72</b>
	<b>Bijlage 1 Begeleidingscommissie</b>	<b>76</b>
	<b>Bijlage 2 Deskundigen</b>	<b>77</b>
	<b>Bijlage 3 Topiclijsten</b>	<b>78</b>
	<b>Bijlage 4 Deelnemers expertmeeting</b>	<b>81</b>

# Summary

In recent years the position of grandparents is attracting more attention in the Netherlands. Several factors have strengthened the relationship between grandparents and their grandchildren. Women work more changing the social role of grandparents because they mind their grandchildren more. In addition, grandparents have more possibilities to take care of their grandchildren, since their health is generally better and, nowadays, families are smaller as well. At the same time more attention is paid to situations in which grandparents no longer (are allowed to) see their grandchildren. When they are unsuccessful in restoring contact with their (grand)children they can request a contact arrangement in court. To be awarded contact, they have to prove their close relationship with their grandchildren.

In this study, we have looked at the ways in which present and future (legal) instruments may contribute to a contact arrangement between grandchildren and grandparents that will benefit the child involved. What are the causes of the absence of contact between grandparents and their (grand)children? Which legal and non-legal means are there to re-establish this contact or to initiate a contact arrangement? What may contribute to improved contact which serves the child's interest?

We have collected opinions about this issue and the background of the problems involved by means of a literature study, a survey among the grandparents affiliated with the For My Grandchild Foundation, through interviews with a number of grandparents and interviews with professionals from different perspectives. Furthermore, we have carried out a study on case law and comparative law, in order to deal with not only Dutch law, but also to learn from across the borders as well. We have presented the preliminary results of this study in an expert meeting to eight experts in this area. We will summarize the results below.

## Nature, scale and consequences of the absence of contact

In general, the quality of life of both child and grandparents improves when they have a meaningful relationship. When such a relationship is in place, grandparents can play an important role as a buffer or safety net for grandchildren and their parents if parenting problems occur. In such a situation, when the connection between grandparents and their grandchildren is suddenly severed, this may be detrimental to the children. A potential buffer function of the relationship with grandparents thus depends on the quality of that relationship. The consequences of grandchildren not seeing their grandparents any more also depend on the contact's previous quality and trusting bond existing before the break.

The termination of contact can be caused by several different factors. When grandparents interfere in the parenting, this can cause parents to distance themselves or break off contact. This happens more quickly when latent conflicts occur with sons(-in-law) or daughters(-in-law), or when (past) disagreements remain unsolved. The behaviour of grandparents, for instance, (sexually) inappropriate behaviour may also be a reason for breaking off contact. When parenting issues in a family result in an out-of-home placement of the children, the grandparents may lose contact. Yet another factor is divorce, either between the parents or the grandparents. More often, it is the grandparents from the father's side who lose contact when the care primarily rests with the mother, and sides are chosen during the divorce. The death of one of the parents may lead to a termination of the contact as well, as do a move or relocation to another country by either the parents or the grandparents, particularly if long distances are involved. Finally, the grandchildren can be the ones to break off contact with their grandparents.

Literature and this study primarily deal with the consequences for the grandparents. For them, the unwanted loss of contact with their grandchildren can be very emotional. When a sudden break and loss is involved, this may lead to more depressive symptoms than occur in case of a divorce or long-term conflict. Much less is known about the consequences for the grandchildren. Whether the (sudden) absence of contact with the grandparents is detrimental to the child depends, apart from the existence of a trusting bond, also on the child's age and the presence of sufficient other persons (family) with whom the child has a trusting bond. Moreover, children may end up in a loyalty conflict: they really want to see their grandparent but are afraid to discuss this with their mother or father.

Little is known about the scale of unwanted loss of contact between grandparents and grandchildren.

### Legal and non-legal possibilities in the Netherlands

The framework for the legal position of grandparents is provided by the European Convention on Human Rights (ECHR) and the Convention on the Rights of the Child (CRC). Based on the case law of the European Court of Human Rights (ECtHR – the Strasbourg Court), initially the parents determine whether contact between grandparents and their grandchildren can take place. However, the state has the obligation to realize 'normal contact between grandparents and grandchildren' when there is family life between grandparents and their grandchildren. According to the case law, 'family life' does not exist purely based upon legal or biological parentage. A close bond can come about when the grandchild lodges with the grandparent, however, regular contact may suffice as well. Since under normal circumstances, the nature of the relationship between grandparents and grandchildren differs from that between parents and their children, the former relationship generally deserves less protection than the latter one.

In the Netherlands, the rule applies that there is family life between grandparents and grandchildren if they have a close personal relationship.

For grandparents, the threshold for taking legal steps is high, as an empirical study shows. Furthermore, grandparents and professionals consider litigation to be stressful for the grandchild. Usually, grandparents most of all aim to re-establish contact. To this end, they undertake different activities such as sending postcards. Grandparents also look to the use of mediation to come into contact with the parents. This may happen with help from family members (informally) or through professional mediation. Furthermore, grandparents seek contact with welfare organisations such as youth care, social work or the general practitioner. When they contact a lawyer, they do not always take legal action. It may go no further than advice, a mediation meeting, or sending a letter to the parents.

When a legal procedure is started, two steps are important: the admissibility of the case and the substantive assessment of the request. In the Netherlands, the grandparents request is admissible if they can prove they have a close, personal relationship with the child. The 'type' of grandparent (be it a legal blood relative from the mother's or father's side, or a social grandparent) is of no consequence. Once admissibility is established, the next step is the decision whether contact is granted, based on a substantive consideration of the merits of the case. A parent or the child can also make a request for contact. Usually, however, the request is filed by the grandparents.

It is established case law that grandparents have to prove their close and personal relationship with the grandchild, which has to amount to 'more than the usual contact'. Lodging, regular or intensive child minding or contact arrangements after an out-of-home placement may all be relevant. The passing of time cannot make a close, personal relationship fade, unless there are compelling facts and/or circumstances that afterwards put an end to the existing family life. It is not easy to prove that grandparents

have had structural and intensive contact with their grandchildren. In our analysis of 28 cases, it was the exception rather than the rule that regular contact, without grandparents having taken up part of the care, was sufficient to prove a close and personal relationship. This is a remarkable difference with the ECtHR case law, from which follows that the state must guarantee that grandparents and grandchildren can have contact, enabling them to maintain a 'normal' grandparent-grandchild relationship.

The grounds for denial, based on which a request for contact can be refused, are the same as those for parents without parental authority. In view of ECtHR jurisprudence, which clearly demonstrates that the right of (biological) parents outweighs the right of grandparents, this is remarkable. Regarding the right of information about the grandchildren, there is a clear difference between grandparents and parents without parental authority: grandparents do not have this right, while the parents have it.

### Lessons from beyond our borders

All four countries (Belgium, England & Wales, Norway and the Netherlands) are bound to the CRC and ECHR. Nevertheless, the right of grandparents to contact with their grandchildren is filled in differently. Only in Belgium, grandparents explicitly have a right to contact. Belgium is the only country where being a legal grandparent suffices for filing a request for a contact arrangement. Legal grandparents do not have to prove a close bond; only social grandparents (non-legal grandparents, for instance, step-grandparents) must prove such a relationship. In England & Wales, the right to contact depends on the bond between grandparents and grandchild, separated from the underlying problems/causes of the absence of contact, similar to the rules in the Netherlands. Yet, in England & Wales, another threshold has been set because, to be able to file a request, one has to first file for a so-called leave of court. In Norway, a grandparent can only file a request if one or both parents have died, or if the parent (the grandparent's

child) does not or seldom have contact with the child (in case of an out-of-home placement of the child). The goal of a contact arrangement is clearly directed at the identity development of the child and at the child's need of contact with both sides of the family. We have called these three different perspectives, respectively, the right of grandparents, the importance of a close bond, and the parents' autonomy.

In both England and Norway, at the moment admissibility is declared, a close bond is proven by an objective and simple test. The intensity of the relationship between grandparents and grandchildren only plays a large role during the substantive assessment. In this respect, these countries diverge from the Netherlands, where the intensity of the bond does play a role in the issue of admissibility. This makes the threshold to prove admissibility seem higher.

In all four countries, the question whether the right to contact is granted depends on the child's interest. The starting point regarding the child's interest differs, however. In Belgium, the legislature assumes that contact between grandparents and grandchildren is, in principle, in the children's interest; for this reason, contact is only denied if 'the exercise of this right goes against the child's interest'. The Netherlands uses a similar starting point once the admissibility of the grandparents is established. In that case, contact can be denied if 'this is contrary to the substantial interests of the child'. In England & Wales and Norway, the starting point is that grandparents must prove that contact is in the child's interest. Thus, the burden of proof lies with the grandparents.

All countries provide that a judge can impose different forms of contact (for instance, by telephone or email) and a contact arrangement between grandparents and grandchildren. The scarcely available case law shows that the established arrangements are limited to a few times for a few hours per year. In none of the studied countries, a legal right to information has been laid down.

## What may contribute to improved contact

With regard to the legal position of grandparents, the Netherlands can learn from the developments abroad, depending on the value attached to the perspectives: parents' autonomy, the importance of the bond between grandparents and grandchildren, and the right of grandparents. Although it follows from the international framework that judges have an obligation to stimulate the bond between grandparents and children, in individual cases judges have the possibility to attach great(er) value to the grandparent-grandchild relationship. This is important, especially when grandparents are an established anchor and/or confidant for the children. Although the current open norm of an existing 'close and personal relationship' may adversely affect legal certainty since the interpretation of this concept is unclear, it offers the opportunity to come to a sound judgement, depending on the circumstances in each case. Moreover, in this way legal and social grandparents are treated equally. After all, in practice legal grandparents do not by definition have a better relationship with their grandchild. The open norms in legislation guarantee that also the social grandparent can request a contact arrangement.

Nevertheless, in the Netherlands the threshold for filing a request for a contact arrangement seems to be too high. While within the international legal framework, the starting point is a 'normal' grandparent-grandchild relationship, in the Netherlands this must be a 'more than usual' contact. Therefore, another interpretation of the legal practice regarding the concept of 'close and personal relationship' would be an obvious way to proceed.

In addition, experts emphasise the wishes and interests of the children involved. The starting point should be whether the child wants contact with the grandparent. The child must be heard during procedures. The child's interests may further be safeguarded through the appointment of a special guardian.

Furthermore, in case of a divorce, standard attention should be paid in the obligatory parenting plan to contact with the grandparents, based on the child's interests. The Dutch Child Care and Protection Board, the certified institutions dealing with the execution of child protection and the foster care organisations may play a role in this, by attaching greater importance to the contact between grandparents and their out-of-home placed grandchildren. In addition, a supportive measure may be to increase the number of neutral locations where grandchildren and grandparents can meet.

Mediation seems preferable. A new regulation might be adopted, for example, to provide the judge with the possibility of first involving mediation about a contact arrangement before taking a judicial decision.

To conclude, more attention in society for the problem can contribute to breaking the taboo and shame among grandparents. Once the problem is better known, this may encourage grandchildren to renew the contact with their grandparents when they reach adulthood.



Colofon

Opdrachtgever	WODC
Auteurs	Mr. dr. M. Jonker Dr. A. Sarti Dr. Chr. Jeppesen de Boer Mr. dr. K.D. Lünemann
Met medewerking van	Mr. drs. L.F Drost N. Koster, MSc
Vertaling	Van Staveren vertalingen
Omslag	Ontwerppartners, Breda
Uitgave	Verwey-Jonker Instituut Kromme Nieuwegracht 6 3512 HG Utrecht T (030) 230 07 99 E <a href="mailto:secr@verwey-jonker.nl">secr@verwey-jonker.nl</a> I <a href="http://www.verwey-jonker.nl">www.verwey-jonker.nl</a>

De publicatie kan gedownload worden via onze website:  
<http://www.verwey-jonker.nl>.

ISBN 978-90-5830-996-9

© WODC, Den Haag 2020.

Het auteursrecht van deze publicatie berust bij het Verwey-Jonker Instituut. Gedeeltelijke overname van teksten is toegestaan, mits daarbij de bron wordt vermeld.

The copyright of this publication rests with the Verwey-Jonker Institute. Partial reproduction of the text is allowed, on condition that the source is mentioned.

In Nederland is er de afgelopen jaren meer aandacht voor de positie van grootouders. Grootouders zijn meer gaan oppassen, en daarmee is hun maatschappelijke positie veranderd, en de band met hun kleinkinderen sterker geworden. Tegelijkertijd is er ook meer aandacht voor de situaties waarin grootouders hun kleinkinderen niet meer (mogen) zien.

We onderzochten welke oorzaken er zijn voor het ontbreken van omgang tussen grootouders en hun kleinkind(eren). Welke juridische en niet juridische middelen zijn er om deze omgang te herstellen of te initiëren? Wat kan bijdragen aan hersteld contact, in het belang van het kind?

Naast een empirisch onderzoek naar de problematiek van het ontbreken van contact tussen grootouders en kleinkinderen, bevat dit rapport een juridisch en rechtsvergelijkend onderzoek naar de positie van grootouders in Nederland, Noorwegen, België en Engeland/Wales.